



**REPUBLIC OF SOUTH AFRICA**  
**THE LABOUR COURT OF SOUTH AFRICA, JOHANNESBURG**  
**JUDGMENT**

Not reportable

**CASE NO: JR 2322/10**

In the matter between:

**ROLFES RESINS (PTY) LTD**

**Applicant**

and

**NBCCI**

**First Respondent**

**COMMISSIONER F MOOI NO**

**Second Respondent**

**SACWU obo BETHUEL MBELE**

**Third Respondent**

**Judgment delivered: 29 April 2013**

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**RULING: APPLICATION FOR LEAVE TO APPEAL**

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**VAN NIEKERK J**

- [1] This is an application for leave to appeal against a judgment delivered by the court on 7 December 2012. The judgment was delivered *ex tempore*. On 22

January 2013, the applicant requested a transcription of the judgment. A transcribed, signed judgment was made available to the parties on 18 March 2013. The present application was filed on 9 April 2013.

- [2] The relevant rule requires an application for leave to appeal to be filed within 15 days of the judgment in respect of which the application is made. When the reasons for judgment are only made available later, the time limit commences running on the day that the reasons are made available, and not the date on which any transcription of an *ex tempore* judgment is made available to the parties. In the present instance, full reasons for the court's judgment were given on 7 December. The transcription was simply that – a record of the full reasons already given. The applicant was required therefore to have filed the present application by no later than 4 January 2013. It failed to do so. The applicant only requested a transcript on 22 January 2013; nearly three weeks after the present application ought to have been filed. In the absence of an application for condonation for the late filing of the application, leave to appeal stands to be refused.
- [3] In any event, the application for leave to appeal misconceives the nature of the review proceedings that were the subject of the judgment in respect of which leave to appeal is sought. The Labour Appeal Court has noted that given the nature *Sidumo* test, it is not often that arbitration awards made by commissioners or bargaining council arbitrators will be reviewed and set aside, and that the distinction between a review and an appeal remains intact. The grounds for appeal in the present instance are predicated on the assumption that the court was required to determine the correctness of the arbitrator's decision, and not its reasonableness. There is nothing in the grounds for leave to appeal that suggests that the court erred in finding that on the applicant's version, the arbitrator's decision fell outside of the band of decisions to which reasonable decision-makers could come on the available material.

For these reasons, I make the following order:

1. Leave to appeal is refused.

Andrè van Niekerk  
Judge of the Labour Court

LABOUR COURT